PAULA M. YOST (SBN 156843)
paula.yost@dentons.com
MATTHEW G. ADAMS (SBN 229021)
matthew.adams@dentons.com
DENTONS US LLP
525 Market Street, 26th Floor
San Francisco, CA 94105-2708
Telephone: (415) 882-5000
Facsimile: (415) 882-0300

Attorneys for Real Party In Interest
YOCHA DEHE WINTUN NATION,
a federally recognized Indian tribal government

UNITED STATES DEPARTMENT OF INTERIOR

ASSISTANT SECRETARY – INDIAN AFFAIRS

CAPAY VALLEY COALITION, Appellant, v. PACIFIC REGIONAL DIRECTOR, BUREAU OF INDIAN AFFAIRS, Appellee.	BRIEF OF REAL PARTY IN INTEREST YOCHA DEHE WINTUN NATION IN RESPONSE TO OPENING BRIEF OF APPELLANT CAPAY VALLEY COALITION
YOCHA DEHE WINTUN NATION, Real Party In Interest.	

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I. INTRODUCTION

Appellant Capay Valley Coalition ("CVC"), a non-profit "community organization," appeals the Bureau of Indian Affairs' decision to take 853 acres of land into trust for the benefit of the federally recognized Yocha Dehe Wintun Nation ("Yocha Dehe" or "Tribe"). In evaluating that challenge, it is meaningful to distill what CVC argues, and what it does not. Nowhere does CVC contend the Pacific Regional Director lacked the power and authority to grant the sovereign Tribe's trust application under the federal law that governs her actions, specifically, the Indian Reorganization Act ("IRA"). Nor does CVC argue the Regional Director lacks broad discretion in deciding whether to grant a particular application. To the contrary, CVC concedes that her decision is entitled to substantial deference, and that it bears the burden of proving she erred despite that deferential standard. (CVC Opening Brief ("CVC Brf"), 4:3-13.) The essence of CVC's position is that the administrative record upon which the Regional Director based her decision fails to support it, requiring remand to further develop the record. (*Id.*, 4:15-27, 8:3-5.) In making this argument, CVC distorts both the existing record and the law. Further underscoring the frailty of Appellant's argument, CVC identifies alleged problems raised by no one — including CVC — during the months-long comment period. As shown below, the Regional Director's decision to grant the Tribe's 853-acre trust application is well reasoned, readily supported by the record and compliant with the law. It should be affirmed.

II. SUMMARY OF ARGUMENT

In support of its request for remand, CVC misstates the legal standards controlling the federal government's power to take land into trust for a sovereign tribe, suggesting that Yocha Dehe must effectively prove that every one of the 853 acres it asks the United States to take into trust is a "necessity" to "achieve" its "goal" of building homes for its people. (CVC Brf, 5:21-6:4; 8:3-4.) That is not the law. Rather, where the land in question is contiguous to existing trust land, federal law empowers the United States to assume trust ownership if the acquisition serves any *one* of three broad purposes — specifically, for housing, economic development, or tribal

self-determination. 25 C.F.R. § 151.3(a)(1), (3). All *three* purposes are served here.

Nonetheless, applying an erroneous legal standard, CVC argues that by the Bureau's action, the Tribe will secure more trust land than it strictly needs, since Yocha Dehe intends to develop only 99 acres (CVC Brf, 5:21-24), leaving the balance undeveloped, as open space, for agricultural use and preservation. CVC's argument is nonsensical, since it assumes a tribal government only "needs" in trust land that it intends to "develop." That is not the standard, nor should it be, since as noted above, the purposes of the IRA are broader, restoring trust lands to tribal governments for not only housing their citizens, but to provide a sovereign land base for economic development and the tribes' own self-determination. As the record readily shows, placing the full 853 acres in trust furthers all of these purposes, and such will, in fact, enable Yocha Dehe to exercise what CVC calls "full governance" over these lands — a power that, contrary to CVC's suggestion, the Tribe *cannot* exercise over land that remains in fee, and thereby within the State's and County's jurisdiction and regulatory control. *Compare Brendale v. Confederated Tribes & Bands of Yakima Indian Nation*, 492 U.S. 408, 430 (1989) (general rule is that tribes have no authority to regulate fee land) *with* CVC Brf, 5:24-6:2; 8:3-4; *see also City of Sherrill v. Oneida Indian Nation*, 544 U.S. 197, 221 (2005) (section 465 of the IRA provides proper avenue for tribe to reestablish sovereign authority over land).

As for the administrative record, CVC claims three primary deficiencies.

First, it argues the record fails to account for the trust land already held for the Tribe, thereby precluding the Bureau from testing the Tribe's assertion of the need for more. This assertion is patently false (not to mention, legally irrelevant). The record does, in fact, address the Tribe's existing land base, and shows that virtually all is already developed for commercial, residential or governmental use — a fact that even Yolo County conceded below, despite its initial opposition to the Tribe's application. (Realty Administrative Record ("R/AR") Tab 38, p. 1.) The record also shows the Bureau considered this information when granting the application. (R/AR Tabs 1, pp. 14-15; 47, pp. 18-19.)

Second, CVC argues the Bureau failed to analyze jurisdictional conflicts that might arise

from the acquisition, and then paradoxically complains the Regional Director agreed with the Tribe's jurisdictional analysis. In fact, the Regional Director did analyze this issue, as the record shows. (R/AR Tab 47, pp. 21-22.) Moreover, the mere fact that the Regional Director agreed with the Tribe's conclusions, and not those presented by CVC, patently provides no basis for remand.

Third, CVC argues the Regional Director should have analyzed the possibility of a casino/hotel project that it claims the Tribe might build. Specifically, CVC argues the Bureau should have assumed the Tribe *might* build a casino and hotel on the remaining 754 acres, since the Tribe had years earlier considered (and scrapped) an expanded gaming facility on trust land some distance from the proposed trust acquisition to the south. The theory is that the casino project is "reasonably foreseeable" for the acreage the Tribe intends to farm and maintain as open space. (CVC Brf, 10:23-27.) CVC's position rests on nothing but rank speculation, which the Bureau should not (and certainly need not) consider when evaluating a fee-to-trust application. *See, e.g., City of Yreka v. Salazar*, 2011 U.S. LEXIS 62818, *28 (E.D. Cal. June 14, 2011) (Secretary need not consider speculative future uses); *see also City of Lincoln City v. United States*, 229 F. Supp. 2d 1109, 1124 (D. Or. 2001). To the contrary, the agency may consider only what the Tribe plans to build, as opposed to theoretical projects that are not planned (not to mention impractical or ludicrous).[1]

The other federal law at issue here — the National Environmental Policy Act, or NEPA — imposes no different standard than the IRA. Nonetheless, CVC argues otherwise, suggesting the Environmental Assessment ("EA") analyzing the trust acquisition's potential environmental

[1] Revealing the fallacy of CVC's phantom casino theory, it is suggesting the Tribe might build a casino/hotel on the remaining 754 acres slated for farming, even though (1) the Tribe could not operate this casino with actual slot machines (at least, not without violating its Compact with the State (*see* Tribal State Gaming Compact Between State of California and Yocha Dehe Wintun Nation, § 4.3.5 (available at http://www.indianaffairs.gov/WhoWeAre/AS-IA/OIG/Compacts/index.htm#California)); and (2) even though this theoretical casino/hotel would be even farther from the Tribe's customer base, and more difficult to reach than the first (existing) casino, whose location is already less than optimal from an access standpoint. Equally revealing, CVC advances this theory while conceding the trust land on which the existing casino sits has enough room to support the feared casino expansion and a 467-room hotel. (CVC Brf, 12:4-13.) Distilled, CVC's argument is ill reasoned and rests on pure fantasy.

impacts should have assumed the construction of CVC's imaginary casino project. (CVC Brf, 16:21-17:10.) Like the IRA, NEPA does not require an agency to evaluate environmental impacts associated with projects that are not planned or "reasonably foreseeable" (let alone infeasible, as this one is). As shown below, the Regional Director complied with NEPA by giving the potential environmental consequences of the trust acquisition a "hard look," and properly found no significant impact will occur.

In the end, none of CVC's arguments withstand scrutiny, including its stealth casino theory. Having failed to show the Regional Director's decision was arbitrary and capricious, an abuse of her broad discretion, or contrary to law, CVC fails to meet its requisite burden. In fact, the administrative record readily and fully supports the Regional Director's decision, and the Tribe respectfully requests the Assistant Secretary–Indian Affairs bring an end to this process, and affirm the Regional Director's well reasoned decision without delay.

III. FACTUAL AND PROCEDURAL BACKGROUND

On June 20, 2011, the federally recognized Yocha Dehe Wintun Nation ("Yocha Dehe" or "Tribe") applied to the Pacific Regional Director of the Bureau of Indian Affairs for the United States to take trust ownership of 853 acres of land the Tribe had purchased and owned in fee. (Realty Administrative Record (hereinafter "R/AR") Tab 1 (Yocha Dehe Application).) As the Tribe explained in its application, a central purpose of the requested trust acquisition — adjacent the Tribe's existing residential and governmental community in ancestral territory known today as the Capay Valley — is to allow the Tribe to provide homes for its growing population, and to build a school, cultural and other educational facilities, in a planned development that would be outside the flood plain on which the Tribe's people currently live, and set back and out of view from a nearby highway. (R/AR Tab 1, pp. 14-15.) Most of the proposed trust land would remain in agricultural use (88 percent, or approximately 754 acres), allowing the Tribe to govern, use and preserve all of these lands and their resources under its own authority, and pursue economic development through farming and ranching. At the same

time, the open space would create a "buffer zone" between the proposed housing development and the nearby highway, so as to provide Yocha Dehe citizens greater personal security and privacy. (*Id.*)

As Yocha Dehe's application explained, all of the Tribe's existing trust land is already developed, with housing and government buildings, a fire station, a golf course, a gas station, a commercial gaming facility and hotel, a recreation area, and related infrastructure. (R/AR Tab 1, pp. 14-15; *see also* R/AR Tab 47, p. 18.) Accordingly, the acquisition would enable the Tribe to house the 25 Tribal citizens who will become adults and need homes in the foreseeable future (5 persons will need homes in 2016), and provide room for a wastewater treatment facility needed to support the proposed (and existing) tribal residences and governmental buildings. (*Id.*) At the same time, the 853-acre trust acquisition would help Yocha Dehe continue to restore its ancestral land base, and enable its governance over lands that are central to not only the Tribe's agricultural endeavors, but to maintain traditional life ways and cultural values that are rooted in the land and its sustainability. (R/AR Tab 1, p. 14; Tab (44 Response Ltr to Yolo Cty Comments, pp. 3-5); Tab 47, pp. 18-20.) As Yocha Dehe explained in its application, only if the United States holds the land in trust will the Tribe be able to fully exercise its sovereign jurisdiction. (R/AR Tab 1, p. 14; Tab 44 (Response Ltr to Yolo Cty Comments, pp. 3-5.)

Over the course of the next two and a half years, the Bureau conducted its realty review of the application, issuing the requisite notices to the public, conducting site inspections, evaluating title commitments and restrictions, considering the tax-related consequences associated with the acquisition, and considering and responding to public comments. (*See* R/AR Tabs 9, 24, 25, 26, 27, 31, 47, 49.) At the same time, the Bureau evaluated the environmental impacts associated with the proposed trust acquisition, as required by the NEPA, 42 U.S.C. § 4321 *et seq.*, directing the requisite environmental analyses, circulating environmental documents, and considering, and responding to, public comments about the environmental impacts associated with the proposal. (*See* Environmental Administrative Record ("E/AR") Tab 31, pp. 1-66.)

On October 25, 2012, the BIA issued a Finding of No Significant Impact ("FONSI") concluding the proposed trust acquisition will not significantly impact the environment. (E/AR Tab 35.) On April 28, 2014, the BIA issued its Notice of Decision, approving Yocha Dehe's application to have the United States take the proposed 853 acres of land into trust for the Tribe's sovereign benefit. (R/AR, Tab 47.) While having participated in the comment process throughout, the County of Yolo — the local jurisdiction in which the proposed trust acreage sits — has not challenged the decision.

The only challenge to the Regional Director's decision comes from CVC, an organization led by Pamela Welch. (R/AR Tab 40 (identifying Welch as president and primary contact for CVC).) Before filing this administrative appeal, Welch (and Tom Frederick, another CVC member and her spouse) had offered to sell their 110-acre property to the Tribe for $27.5 million, a price roughly twenty times over market value.[2] (R/AR Tab 44 (Response Ltr to CVC Comments, p. 2 n.1, Attachment D).) The "offer" came with the assertion that without the "sale," Welch and Frederick would have no choice but to challenge the application. (*Id.*) The Tribe declined to purchase their property. This administrative appeal followed.

IV. ARGUMENT

A. THE REGIONAL DIRECTOR PROPERLY EXERCISED HER BROAD DISCRETION IN GRANTING YOCHA DEHE'S TRUST APPLICATION.

1. The Regional Director's Decision Is Consistent With The IRA's Broad Purposes, And CVC Bears The Burden Of Demonstrating Otherwise.

In authorizing the Secretary of the Interior to acquire lands in trust for tribes and individual Indians in the Indian Reorganization Act (25 U.S.C. § 465, *et seq.*) ("IRA"), Congress' broad goal was to "conserve and develop Indian lands and resources" as such lands are "essential for the economic advancement and self-support of...Indian communities." *South Dakota v. U.S.*

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[2] Welch and Frederick offered to sell their property for $250,000 per acre, when the market value for land in the area is approximately $12,500 per acre. (R/AR Tab 44 (Response Ltr to CVC Comments, p. 2 n.1, Attachment D).) The "offer" is notable to the extent it reveals the true motivations of at least the president and member of this small "community organization."

Dep't of Interior, 487 F.3d 548, 552 (8th Cir. 2007) ("*South Dakota III*") (internal citations omitted); *see also South Dakota v. U.S. Dep't of Interior*, 314 F. Supp. 2d 935, 943 (D.S.D. 2004) ("*South Dakota I*") ("The IRA...was enacted to safeguard Indian land against alienation from Indian ownership and against physical deterioration," and to "rehabilitate the Indian's economic viability and halt the loss of their land..."). These broad goals are served by the acquisition of additional trust lands for Indian tribes. *South Dakota v. U.S. Dep't of Interior*, 423 F.3d 790, 798 (8th Cir. 2005) ("*South Dakota II*").

The regulations implementing the IRA set forth the United States' land acquisition policy, which is to acquire lands for Indian tribes where needed for tribal housing, to facilitate tribal economic development, and/or for tribal self-determination. 25 C.F.R. § 151.3. The Bureau's interpretation and application of the IRA's implementing regulations — here, 25 C.F.R. Part 151 — is entitled to "substantial deference." *South Dakota III*, 487 F.3d at 551. A party challenging that determination must prove the Bureau abused its discretion in interpreting and applying these regulations to a particular application. *South Dakota II*, 423 F.3d at 800. To that end, CVC must prove the Bureau's Pacific Regional Director either acted outside the scope of her authority, failed to consider the relevant factors before deciding the matter, or failed to follow the requisite procedures. CVC cannot meet that burden here. *Id.*

While conceding the Regional Director's decision is entitled to substantial deference (CVC Brf, 3:1-2, 4:3-13), CVC suggests her decision is deficient given a lack of information in the administrative record. Specifically, it argues the Regional Director failed to consider certain information it claims is relevant to the Part 151 factors when deciding the Tribe's application. (CVC Brf, 4:12-18.) To prove that argument, CVC "must present evidence that the [Regional Director] did not consider a particular factor; it may not simply point to the end result and argue generally that it is incorrect." *South Dakota II*, 423 F.3d at 800. While CVC asserts the record contains gaps of important information, the alleged gaps are non-existent, overstated, or legally irrelevant in any event, as shown below. Accordingly, remand is improper and the Regional Director's decision should be upheld.

2. The Administrative Record Readily Supports The Regional Director's Determination That The Tribe Needs The Requested Trust Land.

a. The Regional Director Issued A Well Reasoned Decision That Confirmed The Tribe's Need For The Requested Trust Land.

In evaluating a request for the transfer of lands into trust, the Bureau must consider the "need of the....tribe for additional land." 25 C.F.R. § 151.10(b). Here, Yocha Dehe's application and response to comments detailed why it needed the 853 acres, not only for the planned community development, but to use, preserve and protect the remaining open space and farm land as a residential/governmental buffer, and also for purposes involving economic development and self-determination. Based on the record, the Regional Director concluded the Tribe established the requisite need for the requested trust land. Specifically, in assessing "need," the Regional Director determined that:

- Acquiring the land in trust is "essential" to the Tribe's "ongoing efforts to restore its ancestral land base," as all of the proposed trust parcels are situated in a rural valley that is the Tribe's ancestral homeland, and at the "heart of the Tribe's culture and heritage." (R/AR Tab 47, p. 18);
- Placing the land in trust will enable the Tribe to exercise a "traditional way of life" connected to the land, while "maintaining the rural character of the Nation and the surrounding lands." (*Id.*);
- Placing the requested acreage in trust will also help create a "buffer zone" that gives the "new residential community greater personal security and privacy" than presently exists for Yocha Dehe citizens, and empower "the Tribe to exercise its sovereign jurisdiction over the land at its fullest extent." (R/AR Tab 47, p. 18; *see also id.*, p. 13.);
- Acquiring the land in trust would provide "much needed space for expansion and growth of the Tribe," since its existing trust land base "is largely developed," with various identified commercial, governmental and residential buildings, as well as recreational areas, and which "cannot continue to support the growing population." (R/AR Tab 47, p. 18);

- Acquiring the parcels in trust would enable the Tribe to providing housing, and also develop a wastewater treatment plant for not only the planned and existing residential and governmental developments, but generate recycled water that could be used for agricultural purposes as well. (R/AR Tab 47, pp. 18-19);
- Acquiring the identified parcels in trust would enable the Tribe to "protect the environment and preserve the Nation and its lands." (*Id.*)

The Regional Director's analysis and ultimate determination is readily supported by the record, including the Record of Decision, which included the Tribe's explanation as to why it needed the land — not simply to develop a residential community, but to strengthen and enhance an agricultural operation that constitutes an increasingly important component of the Tribe's economic development base, while at the same time, empowering the Tribe to govern the land pursuant to its own authority. (R/AR Tab 47, pp. 9-10, 12-14.) This would ensure the protection and preservation of cultural resources and sacred sites on these lands (pursuant to tribal laws more restrictive than state and federal laws); ensure that the land retains its rural character, including lands within a pastoral public view shed (which could be lost through a county-approved subdivision if the Tribe ever lost ownership); and enable the Tribe to exercise cultural practices and traditions tied to its own control of the land. (R/AR Tab 47, p. 13; *see also* R/AR Tab 44 (Response Ltr to Yolo Cty Comments, pp. 2-4, 10-13).) Yocha Dehe also provided specific detail as to such cultural practices. (R/AR Tab 44 (Response Ltr To Yolo Cty Comments, pp. 4, 11-13.)

In sum, the Regional Director's decision was amply supported by the record, and it falls squarely within IRA's goals (*see, e.g., South Dakota III*, 487 F.3d at 552), not to mention the Bureau's own land acquisition policy (supporting acquisitions necessary for housing, economic development and self-determination (*see* 25 C.F.R. § 151.3)). The fact that CVC disagrees with the result is of no consequence, and no basis for remand. *South Dakota II*, 423 F.3d at 800.

b. CVC Misstates The Standard Governing A Tribe's "Need" For Trust Land Under The IRA.

Despite the foregoing, CVC challenges the Bureau's decision based on its erroneous understanding as to what a tribe must show, and the Bureau must find, to support the "need" for trust land under the IRA. Specifically, CVC claims the Regional Director "[f]ailed to demonstrate the existence of Tribal need for the land to be placed in trust," and that "nothing in the administrative record indicates how the Tribe is hindered by the property remaining in fee." (CVC Brf, 5:4-6; 7:1-2.) In essence, CVC argues that because the land need not be held in trust to achieve all of the Tribe's goals — namely, continued agricultural operations on the remaining 754 acres not slated for development — the Tribe cannot show the requisite need for these lands to be held in trust. CVC fundamentally misconstrues the required showing under § 151.10(b).

Federal district courts (as well as the Interior Board of Indian Appeals) construing and applying the IRA have consistently held that § 151.10(b) does not require that the Bureau engage in any comparative fee-versus-trust analysis — in other words, an analysis as to why continued fee ownership of land is insufficient for the Tribe to fulfill its needs or goals, such that trust status is essential to these goals. *See, e.g., County of Charles Mix v. U.S. Dep't of Interior*, 799 F. Supp. 2d 1027, 1045 (D.S.D. 2011) ("Section 151.10(b) does not require the BIA to consider why the Tribe needs the land held *in trust.*"); *South Dakota II*, 423 F.3d at 801 ("[I]t would be an unreasonable interpretation of 25 C.F.R. § 151.10(b) to require the Secretary to detail specifically why trust status is more beneficial than fee status in the particular circumstance."); *State of Kansas and Jackson County v. Acting Southern Plains Regional Director, Bureau of Indian Affairs*, 56 IBIA 220, 225 (2013) ("[W]e have consistently held that § 151.10(b) only requires consideration of the tribe's need for the land—*not* its need for the land to be in trust status.").

Indeed, consistent with the foregoing, and as the Interior Board of Indian Appeals ("IBIA") has recognized, the Bureau "has broad leeway in its interpretation or construction of tribal 'need' for land." *County of Sauk, Wisconsin v. Midwest Regional Director, Bureau of*

Indian Affairs, 45 IBIA 201, 212 (2007). Precisely because needs can vary significantly from tribe to tribe, "flexibility in evaluating 'need' is an inevitable and necessary aspect of the [Bureau's] discretion." *Id.*

Moreover, while the Tribe need not demonstrate, and the Regional Director need not determine, that trust status is necessary to achieve a tribe's particular goals, the Regional Director actually did make that specific finding here. She concluded that trust status was "essential" "for the Tribe to exercise its sovereign jurisdiction over the land at its fullest extent": in other words, she found that it would facilitate the Tribe's self-determination to have the land in trust. (R/AR Tab 47, p. 18-19.) The record itself amply supported that analysis, as confirmed by the Tribe's application, as well as its reasoned response to comments made by CVC and the County of Yolo. (*See* R/AR Tab 1, pp. 14-15; Tab 44 (Response Ltr to CVC Comments, pp. 1-2; Response Ltr to Yolo Cty Comments, pp. 1-5).) Accordingly, the Regional Director complied with IRA. *See South Dakota v. U.S. Dep't of Interior*, 775 F. Supp. 2d 1129, 1142 (D.S.D. 2011) ("*South Dakota IV*") (*citing South Dakota II*, 423 F.3d at 801) (federal regulation requires only that the Bureau's decision "express the Tribe's needs" and "conclude generally that IRA purposes [are] served" by land's acceptance into trust).

c. The Record Contained Sufficient Information About The Tribe's Existing Sovereign Land Base To Enable The Regional Director To Assess The Tribe's Needs.

CVC argues the Regional Director's decision-making is not informed because Yocha Dehe's application contained no accounting of the Tribe's existing trust acreage, with a detailed explanation of the trust lands' present use. (CVC Brf, 11:13-19.) This alleged omission, CVC argues, "hinders the Regional Director's ability to thoroughly evaluate the need for additional acres to be transferred to trust." (*Id.*, 11:26-12:2.)

In fact, the Tribe *did* provide information about its existing trust land base, identifying how it was used, and explaining that it was all essentially fully developed. *See* R/AR Tab 1, pp. 14-15 (Tribe's existing land base is largely developed (fire department, casino, hotel, gas station,

school, administration facilities, community center, recreation area), and inadequate to accommodate Tribe's rising housing and governmental needs). Based on that record, the Regional Director expressly found that the Tribe's existing land base is inadequate to meet the Tribe's needs. *See* R/AR Tab 47, pp. 18-19 (existing trust lands developed, and Tribe lacks adequate space to provide for expansion and growth of the Tribe). Accordingly, CVC's argument that the record excludes, and the Regional Director did not consider, information regarding the Tribe's use of its existing trust land necessarily fails.

Moreover, and despite that showing, nothing in the Bureau's regulations (*see* 25 C.F.R. § 151.9 (request need only contain description of land, and other information showing acquisition comes within Part 151)) or fee-to-trust policy (*see* Acquisition of Title To Land Held in Fee Or Restricted Fee States (Fee-to-Trust Handbook), § VIII, pp. 8-10 (June 16, 2014)) requires tribes to submit, as part of their applications, a detailed accounting of the amount and use of their existing land base. This makes sense because the Bureau itself — and in fact, the very same Regional Office issuing the decision here — is responsible for overseeing, and maintaining records regarding, the Tribe's trust land holdings.

d. CVC's "Needs" Argument Reveals A Fundamental Disregard For The Right Of Self Determination That The IRA Seeks To Facilitate For Federally Recognized Tribal Governments.

CVC claims the Regional Director failed to adequately consider alternatives to placing all of the requested 853 acres in trust. Specifically, CVC argues that the Tribe could achieve its development goals on the 99 acres of land upon which development is contemplated, without acquiring the remaining 754 acres. (CVC Brf, 5:21-6:24.) Alternatively, CVC argues the Tribe does not need any of the requested acreage in trust, suggesting it could house its citizens on fee land, as well as existing trust land on which its casino is located. (*Id.*) Both arguments reveal a fundamental disregard for the Tribe's inherent right to plan and provide for the health and welfare of its own people, within sovereign territory restored to Yocha Dehe, and subject to its

own laws and cultural traditions.[3]

Not surprisingly, CVC cites no statutory authority to support its theory that the Regional Director must consider alternatives to the Tribe's application as part of the "needs" analysis. As noted above, she must only conclude that the Tribe's need for the land serves the purposes of the IRA, and she "must merely explain why the Tribe needs the additional land." *South Dakota I*, 314 F. Supp. 2d at 943. She did that here. CVC's apparent disagreement with that "needs determination" hardly renders it inadequate. *See South Dakota II*, 423 F.3d at 800 ("In order to meet its burden of proof, [appellant] must present evidence that the agency did not consider a particular factor; it may not simply point to the end result and argue generally that it is incorrect.").

Taking the statement of a Tribal Chairman out of context, CVC disingenuously argues the Tribe already can exercise "full governance" over the 11,000 acres of land that it owns in fee. (CVC Brf, 5:24-6:6.) As CVC knows, the Tribe cannot assert "full governance" over lands within the regulatory authority and control of the State and County as a matter of federal law. *See Brendale*, 492 U.S. at 430 (general rule is that tribes have no authority to regulate fee land). Indeed, it is this "full governance" that CVC opposes, insinuating that the Tribe cannot be trusted to preserve and protect the rural character of its own homeland. (CVC Brf, 8:18-19; 12:17-21; 18: 18-23; 19:19-22.)

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[3] CVC goes so far as to suggest the Tribe could meet its housing needs by (1) placing citizens in the few homes that exist *on fee land*; and (2) housing them at the Tribe's casino site, suggesting there must be room for them there, since the Tribe previously planned (but cancelled) a casino expansion that was to add 467 hotel rooms. (*See* CVC Brf, 6:8-12, *citing* R/AR Tab 4.) Both of CVC's "solutions" to the Tribe's housing needs are seriously misplaced. First, CVC clearly fails to appreciate Yocha Dehe's right to house its people on sovereign land. Second, the trust land on which the Tribe's casino sits is far afield from the existing residential community, and it is trust land that serves a commercial purpose. It is patently inappropriate for tribal housing (notwithstanding the Tribe's once unfortunate housing reality that required its people to live in HUD homes on a bingo hall parking lot). That CVC does not appreciate why a tribal government is entitled to house its citizens in a cohesive and protected residential community within its sovereign territory, and near its existing living community, reveals little more than a fundamental disregard for the very tribal self determination the IRA seeks to foster.

In reality, the Tribe can preserve and protect the land's aesthetic as ably as — indeed, more so than — the County, which had approved a residential subdivision along a highway that cuts through the Capay Valley, directly within the public view shed. As the record shows, the trust acquisition will eliminate that risk, protecting the aesthetic about which CVC claims to be concerned. Likewise, the record shows the Tribe is committed to protecting the rural character of the pastoral Capay Valley, including cultural resources and sacred sites replete throughout the lands, and will do so through its own protective laws and policies. (R/AR Tab 44 (Response Ltr to Yolo Cty Comments, p. 3); Tab 47, p. 18.)

3. The Regional Director Considered Potential Jurisdictional Conflicts Associated With the Acquisition, And The Record Supports Her Conclusion.

Section 151.10(f) requires that the Bureau consider the "jurisdictional problems and potential conflicts of land use which may arise" from the acquisition. The BIA fulfills its obligation under § 151.10(f) so long as it " 'undertake[s] an evaluation of potential problems.' " *See South Dakota I*, 314 F. Supp. 2d at 945 (*quoting Lincoln City*, 229 F. Supp. 2d at 1124). In addition, the Bureau may rely on information and representations in a tribe's application to assess the potential for jurisdictional conflicts. *Id.* (Secretary can consider tribal statements as part of jurisdictional analysis under § 151.10(f).)

CVC inaccurately asserts that the Regional Director "simply restates the Tribe's assertions" as they related to jurisdictional conflicts. (CVC Brf, 8:1-2.) While legally irrelevant, this is not true either. The Regional Director evaluated the potential jurisdictional problems resulting from the proposed trust acquisition, expressly making the following findings that no jurisdictional conflicts are anticipated:

- The property lies at the heart of the Tribe's ancestral territory, in the unincorporated area of Yolo County and contiguous to the Tribe's existing trust lands (R/AR Tab 47, p. 21.);
- While the property will no longer be subject to Yolo County's regulatory jurisdiction, once taken into trust, the State will retain the same territorial and

adjudicatory jurisdiction over the land, as well as criminal/prohibitory jurisdiction against all persons and conduct occurring on the land (R/AR Tab 47, p.21.);

- With the acquisition, most of the property will be used consistently with permitted and conditionally-permitted uses identified in Yolo County's Agricultural Preserve zoning, and roughly 88% of the property will remain in agricultural production (*Id.*);
- The Tribe shares the County's interest in protecting the land's rural character (*Id.*);
- The Tribe provides and funds law enforcement, fire protection and emergency services not only on its own lands, but throughout Yolo County (*Id.*, pp. 21-22.); and
- The Tribe and County have developed a positive working relationship, and the Tribe intends to continue fostering that relationship both as a good neighbor and in the spirit of government-to-government relations (*Id.*, p. 22.).

In sum, the record readily supports the Regional Director's conclusions, and the courts have upheld similar jurisdictional conflict-related decisions. *See, e.g., South Dakota III*, 487 F.3d at 554 (no jurisdictional conflicts where land adjacent to existing trust land, present and contemplated use consistent with local zoning, and agreement between tribe and city for fire and law enforcement services). In the end, CVC reveals no error in the Regional Director's jurisdictional conflicts analysis.

4. It Would Have Been Inappropriate For The Regional Director To Consider Speculative Future Developments Inconsistent With The Tribe's Land Use Plans, As CVC Erroneously Argues Should Have Occurred Below.

CVC argues the Regional Director failed to consider potential jurisdictional and land use conflicts that could arise if Yocha Dehe were to develop the property beyond that which it contemplates. (CVC Brf, 8:18-10:28.) Specifically, CVC contends the Regional Director should have assumed the Tribe might build a casino on the property, since the Tribe had earlier conceived (and then cancelled) a project expanding its gaming facility on trust land to the south

of the proposed acquisition. CVC argues the Tribe's earlier terminated casino expansion plans should have been considered a "reasonably foreseeable" project that might be built on newly-acquired trust land. Again CVC misconstrues completely the Bureau's obligations under § 151.10.

In evaluating the Tribe's request, the Regional Director need only consider facts that are, or should be, within the Bureau's knowledge relevant to the purpose(s) for which the potential trust land will be used. *See Village of Ruidoso v. Albuquerque Area Director*, 32 IBIA 130, 139 (1998) ("In order to demonstrate that it has considered the relevant facts related to the purpose of which a proposed land acquisition will be used, BIA should include in its decision a discussion of the facts which are, or should be, within the BIA's knowledge and which have some bearing on the present or future use of the property."). Under no circumstance is the Bureau required to analyze speculative future uses of the property. *City of Yreka*, 2011 U.S. Dist. Lexis 62818 at *28. Rather, the Bureau is entitled to rely on a tribe's representations regarding future use when evaluating the Part 151 factors. *South Dakota II*, 423 F.3d. at 801; *see also Lincoln City*, 229 F. Supp. 2d at 1123-24 (decision entitled to deference where Bureau evaluated application on basis of Tribe's planned future uses, and not change in use that might occur in the future). CVC's cynical argument takes it nowhere.[4]

The Tribe has no intention to develop the trust acquisition property for any purpose not contemplated in the application, much less to build a casino/hotel there. The record contains no evidence suggesting otherwise. As a matter of law, the Bureau has no obligation to consider

[4] CVC appears to be hitching this argument to a comment stating "there is a strong possibility of a future change of use to some degree of commercial activity" given the County's "prior experience" with a trust acquisition for the Tribe. (R/AR Tab 38, p.3.) What the comment failed to mention is that (1) the prior trust application, for housing and a cemetery, became ensnared in years of litigation against the BIA, County and Tribe (fundamentally for the County's failure to adhere to a state environmental law when cancelling the Williamson Act contracts at issue and entering an MOU with the Tribe); (2) the MOU contemplated a potential change in land use, and the Tribe changed land use plans with the knowledge and support of the County; and (3) it only did so out of necessity, since the years of delay caused by legal challenges and the County's environmental compliance required the Tribe to find an alternative trust site to house its people, which it did. The Tribe detailed this painful history in its comment. (A/AR Tab 44 (Response Ltr to Yolo Cty Comments), pp. 5-7.)

whether proposed trust property will be used for gaming where such is not contemplated. *See, City of Yreka*, 2011 U.S. Dist. Lexis 62818 at *28 (Secretary need not consider speculative gaming use); *Lincoln City*, 229 F. Supp. 2d at 1124 (Secretary did not act arbitrarily or capriciously when approving trust application based on housing development plan rather than on speculation about other possible future uses); *City of Eagle Butte, South Dakota v. Acting Great Plains Regional Director*, 49 IBIA 75, 82 (2009) ("The Regional Director...has no obligation to consider the City's speculation about what might happen in the future.").

CVC concedes — as it must — that the Tribe's casino and resort expansion plans are not part of the application, and that transfering the property in trust merely creates the "possibility" of more intensive development. (CVC Brf, 8:18-19; 12:3-16.) Of course, the only reasonably foreseeable uses of the property are those described in the Tribe's application (R/AR Tab 1, pp. 15-17), the EA (E/AR Tab 31, pp. 1-5 to 1-6, 2-1 to 2-7), and the Tribe's responses to comments. (R/AR Tab 44 (Response Ltr to Yolo Cty Comments, pp. 3-5,7).) The fact that commenters raised concerns regarding the Tribe's previous casino and resort expansion plans does not render those plans reasonably foreseeable uses of the proposed trust property as a matter of law. (CVC Brf, 9:18-23 (*citing* Yolo County's comments letter (R/AR Tab 38 p. 3)); pp. 9, 12 (*citing* Leonard comment letter (R/AR Tab 4)).) CVC's alleged concerns about a theoretical casino or "intense development" are nothing but rank speculation. It would have been inappropriate for the Regional Director to rest her analysis and decision on speculative projects, let alone, accept them as fact.[5]

[5] CVC implies the Tribe has some ulterior development motive, quoting a statement that conditions its application on a commitment to develop no parcel, including any of the parcels within the 99 acres slated for development, "so long as the remaining term of any Williamson Act contract that presently exists" (*i.e.*, those contracts in non-renewal) remains in place for that parcel. (CVC Brf, 2:2-10, quoting R/AR Tab 1, pp. 16-17.) Importantly, that expression is not to signal an intent to develop the 754 acres that the Tribe intends to use as farmland and preserve as open space, as CVC suggests; rather, this commitment is a requirement of the Bureau to assume ownership of land that is subject to any Williamson Act contract that is in non-renewal, but not yet expired. The Tribe will honor that commitment, even for parcels slated for development.

CVC's final argument also fails. Contrary to assertion, the Regional Director did not err by declining a request to restrict the Tribe's future use of the proposed trust land, imposing deed restrictions on future use. Such would be inimical to the very tribal sovereignty the IRA seeks to foster, and so not surprisingly, the Bureau lacks such authority. *See Lincoln City*, 229 F. Supp. 2d at 1224 ("Secretary...does not have authority to impose restrictions on a Tribe's future use of property taken into trust, or to acquire fee-to-trust property conditionally."); *see also City of Lincoln City, Oregon v. Portland Area Director*, 33 IBIA 102, 107 (1999) (same).

B. THE BUREAU FULLY COMPLIED WITH NEPA.

Before approving the trust acquisition, the Regional Director carefully oversaw the preparation of a comprehensive EA that described the purpose and need for the trust acquisition, identified alternatives, evaluated all potential environmental consequences, and recommended mitigation measures capable of reducing those potential consequences to insignificance. (E/AR Tab 31.) The EA showed that the development proposed for the trust parcels, with recommended mitigation, would not significantly impact the environment. (*Id.*, pp. 4-1 to 5-11.) Accordingly, the Regional Director formally adopted the recommended mitigation measures and properly issued a FONSI. (E/AR Tab 35.)

Each of the Regional Director's actions was consistent with — and explicitly authorized by — NEPA and its implementing regulations. *See, e.g.*, 40 C.F.R. §§ 1501.3, 1501.4(b), 1508.9(a) (preparation of EA); 40 C.F.R. § 1508.9(b) (contents of EA); 40 C.F.R. §§ 1501.4(b), 1508.13 (issuance of FONSI). CVC's allegations to the contrary are unfounded and, for the reasons set forth below, the Regional Director's decision must be affirmed.

1. The EA And FONSI Comply With NEPA.

NEPA is a procedural statute that does not dictate a particular result. *See, e.g., Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989); *TriValley Cares v. Dep't of Energy*, 671 F.3d 1113, 1124 (9th Cir. 2012). Rather, NEPA prescribes a process by which federal agencies take a "hard look" at the potential environmental impacts of their actions. *Id.*

NEPA's procedural requirements mandate the preparation of a lengthy Environmental Impact Statement ("EIS") for all "major [f]ederal actions *significantly* affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C) (emphasis added). In order to determine whether a federal action will "significantly" affect the environment (so as to require an EIS), an agency may elect to prepare an EA. 40 C.F.R. §§ 1501.4(b), 1508.9(a). If the EA reveals no potentially significant environmental impacts, the agency may issue a FONSI instead of preparing an EIS. 40 C.F.R. §§ 1501.4(b), 1508.13; *see also Bering Strait Citizens for Responsible Dev't v. United States*, 524 F.3d 938, 954 (9th Cir. 2008) (briefly summarizing process).

Consistent with its purpose, an EA is a "concise" document that includes "brief discussions" of the purpose and need underlying the proposed federal action, possible alternatives to the action, and the action's potential environmental consequences. *See* 40 C.F.R. § 1508.9. An EA need not "amass and disclose all possible details." *TriValley Cares*, 671 F.3d at 1128. Nor must an EA be circulated for review and comment by the general public. 43 C.F.R. § 46.305(b). An EA need only provide "a convincing statement" explaining whether an EIS is required. *TriValley Cares*, 671 F.3d at 1125.

The adequacy of an EA is measured according to NEPA's deferential "hard look" standard. *See, e.g., Native Ecosystems Council v. Weldon*, 697 F.3d 1043, 1051-52 (9th Cir. 2012). So long as the EA provides a "hard look" at relevant environmental issues, it satisfies NEPA. *Id.*; *see also TriValley Cares*, 671 F.3d at 1124 (EA must be upheld unless "the record plainly demonstrates...a clear error in judgment"). The "hard look" standard does not require speculation about projects that are not proposed. *Kleppe v. Sierra Club*, 427 U.S. 390, 402 (1976); *see also Northcoast Envtl. Ctr. v. Glickman*, 136 F.3d 660, 668 (9th Cir. 1998) ("NEPA does not require an agency to consider environmental effects that speculative or hypothetical projects might have").

The EA prepared for the requested trust acquisition easily satisfies NEPA's "hard look" requirement. Specifically:

- The EA details the Tribe's proposal, including a listing of the protective environmental measures and best management practices that were incorporated into the planned development's design (E/AR Tab 31, pp. 2-1 to 2-7);
- The EA contains nearly 150 pages of detailed environmental analysis addressing a full range of environmental issues, including land use, soils, minerals, surface water, storm water, drainage, flooding, groundwater, wastewater, air quality, climate change, wetlands, habitats, sensitive species, historic resources, cultural resources, paleontological resources, socioeconomic conditions, environmental justice, traffic, agriculture, solid waste, electricity, fire protection, parklands, noise, hazardous materials, and visual resources (E/AR Tab 31, pp. 3-1 to 5-11);
- The EA includes 9 technical appendices providing more than 400 pages of additional expert analysis addressing soils, grading, drainage, water supply, wastewater treatment, air emissions, endangered species, cultural resources, agriculture, land use, and local zoning (E/AR Tab 31, Appendix A to Appendix I);
- The EA and its technical appendices recommend mitigation measures capable of reducing the potential environmental impacts of Yocha Dehe's trust acquisition to insignificance and evaluate the feasibility and effectiveness of implementing each recommended measure (E/AR Tab 31, pp. 5-1 to 5-11);
- In preparing the EA, the Bureau consulted and sought input from more than 17 different federal, state, and local agencies (E/AR Tab 15 (distribution of draft EA to 12 state agencies); Tab 31, pp. 6-1 to 6-2 (additional federal, state, and local agencies consulted); E/AR Tab 35, Attachment C (consultation with United States Fish & Wildlife Service)); and
- Although not required to do so (43 C.F.R. § 46.305(b)), the Bureau also circulated the draft EA for public review and comment, responded to each comment received, and incorporated all feedback into the final version of the EA. (*See* E/AR Tab 3 (Draft EA); Tab 31, pp. 1-6 (public comment period, feedback incorporated into final EA); Tab 35, p. 3, Attachment A, Attachment B (responses to comments, feedback incorporated into FONSI).).

The EA's thorough "hard look" at all relevant environmental issues shows that the proposed trust acquisition, with the implementation of recommended mitigation measures, will have no significant impact on the environment. (E/AR Tab 31, pp. 5-1 to 5-11.) The Bureau adopted each of the recommended mitigation measures as a binding condition on its approval of the trust acquisition. (E/AR Tab 35, pp. 5-17.) Thus, the EA and FONSI fully satisfy NEPA.

2. CVC's NEPA Claims Lack Merit.

CVC essentially ignores the thorough, well-reasoned analyses in the EA and FONSI. Instead, it presents a series of vague concerns about hypothetical future casino scenarios, none of which has any basis in fact, law, or the administrative record. (CVC Brf, 13:13-20:23.)

a. The Bureau Took A "Hard Look" At The Possibility Of Future Development On Agricultural Lands.

CVC argues the Regional Director failed to consider the possibility of future development on agricultural lands. (CVC Brf, 14:22-27; 17:16:5-17:11.) The administrative record demonstrates otherwise. The Bureau squarely addressed the issue in the EA and the FONSI, both of which show there is no significant risk of environmental harm because (i) the proposed fee-to-trust acquisition will maintain nearly 90% of the trust property (at least 750 acres) in agricultural use; (ii) there are no plans for future development on the agricultural lands; and (iii) the entire trust property will continue to be subject to federal environmental laws. (*See* E/AR Tab 31, pp. 2-9 to 2-11, 4-23 to 4-24, 4-43 to 4-44, Appendix A, Appendix B (EA); Tab 35, pp. 3 to 6, B-6 to B-7 (FONSI).)

This careful analysis is more than enough to provide the "hard look" NEPA requires. *See Kleppe*, 427 U.S. at 402 ("hard look" standard does not require agencies to consider hypothetical plans); *see also Friends of the Wild Swan v. Weber*, 767 F.3d 936, 942 (9th Cir. 2014) (an EA "is not an exhaustive examination of every possible environmental event"); *TriValley Cares*, 671 F.3d at 1125 ("[a]n agency is not required to consider every scenario").

Indeed, CVC candidly admits that controlling case law authorizes the Bureau to focus its analysis on the land uses proposed by the Tribe (rather than speculating as to other, hypothetical

projects). *See* CVC Brf, 17:1-4 (admitting *Lincoln City*, 229 F. Supp. 2d 1109, held that an EA "need not consider all potential uses of the land transferred to trust" and is "not required to consider uses of the property not identified by the Tribe");[6] *see also Kleppe*, 427 U.S. at 402 (no obligation to evaluate project that has not been proposed).

CVC's real concern is that the proposed trust acquisition might somehow "pre-approve" a casino on the newly-acquired trust land. (CVC Brf, 14:21-24; 17:6-24.) For the reasons addressed earlier, and also below, that concern is entirely unfounded:

- The Tribe has never planned a casino (or any other commercial development) on the property subject to trust acquisition. Indeed, it would make little sense to do so, as the property is farther from gaming and commercial markets than the Tribe's existing casino, and would be more difficult to access.
- The Tribe's current gaming compact with the State of California[7] would prohibit the installation of "gaming devices" in a new casino on the property subject to trust acquisition (*see supra* p. 3, n. 1.). The Tribe has no plans to renegotiate its compact in the foreseeable future.
- The compact likewise prohibits development of a new casino without (i) a Tribal Environmental Impact Report ("TEIR") that fully identifies and evaluates potential environmental issues and (ii) an Intergovernmental Agreement between the Tribe and County mitigating environmental impacts identified in the TEIR. As there is no planned gaming facility for the proposed trust property, the Tribe has no plans to initiate a TEIR or Intergovernmental Agreement.

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[6] CVC halfheartedly tries to distinguish controlling precedent, suggesting "[t]his matter differs from *City of Lincoln City* where there was already approved development." (CVC Brf, 17:5-6.) While its argument is far from clear, CVC seems to be suggesting the existence of a casino on the Tribe's current trust land compels the Bureau to assume that any additional trust land acquired by the Tribe also will be used for gaming purposes. There appears to be no legal authority for that rather remarkable proposition (and certainly CVC cites none).

[7] The gaming compact between the Tribe and the State is publicly available at http://www.nigc.gov/Reading_Room/Compacts.aspx.

- Federal environmental laws — including the environmental review and consultation requirements of NEPA,[8] the Endangered Species Act,[9] and the Clean Water Act[10] — will continue to apply to all property acquired in trust for Yocha Dehe. (*See* E/AR Tab 35, pp. B-6 to B-7.)

In sum, there is no factual or legal basis for CVC's contention that the Bureau's approval of the requested trust acquisition "pre-approves" a casino.

b. The Regional Director Took A "Hard Look" At Potential Land Use Changes In The Capay Valley.

CVC also contends the Bureau failed to consider "future potentially significant changes to land use in the Capay Valley associated with placing [land] in trust." (CVC Brf, 17:25-19:8.) This argument is virtually identical to CVC's allegations regarding "future development on agricultural lands" (*see supra* Part IV.B.2.a), and it fails for many of the same reasons: (i) the proposed trust acquisition will maintain existing agricultural land uses on most of the trust land; (ii) there are no plans for future development; and (iii) the trust property will continue to be subject to federal land use and environmental laws. (*See* E/AR Tab 31, pp. 2-9 to 2-11, 4-22 to 4-24, 4-43 to 4-44, Appendix A, Appendix B (EA); Tab 35, pp. 3 to 6, 16, B-6 to B-7 (FONSI).) In fact, the record shows that the trust acquisition will ***reduce*** the possibility of future land use change by eliminating a county-approved (but not yet built) 30-unit residential subdivision in the heart of the Capay Valley. (*See* E/AR Tab 31, pp. 3-68, 4-22, Appendix I.)[11]

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[8] As explained above, NEPA requires the preparation of a comprehensive EIS for any major federal action significantly affecting the human environment. 42 U.S.C. § 4332(2)(C).

[9] Among other things, the Endangered Species Act protects biological resources by imposing strict prohibitions and consultation requirements on actions that could adversely affect endangered species and their habitats. 16 U.S.C. §§ 1536, 1538.

[10] Among other things, the Clean Water Act imposes substantive and procedural requirements protecting wetlands (and other waters of the United States) from harm. 33 U.S.C. § 1344.

[11] The trust acquisition would involve building 25 homes for tribal citizens. (E/AR Tab 31, p. 2-2.) The subdivision would have permitted 30 dwellings. (*Id.*, pp. 3-68, 4-22, Appendix I.) The trust acquisition's net effect is to reduce the extent to which agricultural land may be used for residential development. (*Id.*)

c. The Regional Director Took A "Hard Look" At Potential Impacts To Water Resources And Habitats.

CVC also contends that water resources and sensitive habitats will be harmed by "the significant potential for a much more intensive project to be undertaken by the Tribe on lands placed in trust." (CVC Brf, 19:9-20:23.) The argument fails for the same reasons identified above: (i) the proposed fee-to-trust acquisition will maintain existing land uses on the vast majority of the trust property; (ii) there are no plans for future development; and (iii) the trust property will continue to be subject to federal land use and environmental laws. (*See* E/AR Tab 31, pp. 2-9 to 2-11, 4-3 to 4-7, 4-14 to 4-18, 4-23 to 4-24, 4-43 to 4-44, Appendix A, Appendix B, Appendix C, Appendix E (EA); Tab 35, pp. 3 to 15, B-6 to B-7, Attachment C (FONSI).) Indeed, the federal Endangered Species Act and Clean Water Act will continue to protect the very resources — water, sensitive species, habitats, and wetlands — about which CVC expresses concern. *See* CVC Brf, 20:8-23; 16 U.S.C. §§ 1536, 1538 (Endangered Species Act); 33 U.S.C. § 1344 (section 404 of Clean Water Act).

d. The Bureau Appropriately Defined The Purpose And Need For The Proposed Trust Acquisition.

Throughout its Opening Brief, CVC insinuates (albeit without explicitly alleging) that the EA's description of the purpose and need for the trust acquisition was somehow improper. (*See, e.g.*, CVC Brf, 15:7-16:14.) These vague suggestions do not withstand scrutiny.

An EA is required to provide a "brief discussion" of the purpose and need for federal action. 40 C.F.R. § 1508.9. A discussion of purpose and need must be upheld "so long as the objectives the agency chooses are reasonable." *Citizens Against Burlington v. Busey*, 938 F.2d 190, 196 (D.C. Cir. 1991) (Thomas, J.); *see also Pac. Coast Fed. of Fishermen's Ass'ns v. U.S. Dep't of Interior*, 996 F. Supp. 2d 887, 906 (E.D. Cal. 2014) ("considerable discretion" to EA's discussion of purpose and need). Where, as here, a project is proposed pursuant to a specific statute, the statutory objectives help determine the reasonableness of the agency's purpose and need. *See Westlands Water Dist. v. United States*, 376 F.3d 853, 867-68 (9th Cir. 2004); *Akiak Native Cmty. v. U.S. Postal Serv.*, 1998 U.S. Dist. Lexis 21667, *21-22 (D. Alaska 1998), *aff'd.*

213 F.3d 1140 (9th Cir. 2000).

The discussions of purpose and need in the EA and FONSI easily meet these standards. Both documents explicitly recognize and respond to the Tribe's need for additional trust land within its ancestral homeland for housing, cultural, educational, and economic development purposes. (E/AR Tab 31, pp. 1-5 to 1-6; Tab 35, pp. 2 to 3, B-4 to B-6, B-18 to B-19; *see also supra* Part IV.A.2.a.) These purposes are consistent with the IRA's statutory objectives, which are to "to conserve and develop Indian lands and resources" and to promote tribal sovereignty and self-sufficiency. *South Dakota III*, 487 F.3d at 552.

It was perfectly reasonable for the Regional Director to decide to take land into trust, pursuant to Congressional authorization, on behalf of an Indian tribe seeking to house its citizens, restore its land base, preserve its culture, and maintain sovereignty and self-sufficiency within its ancestral homeland. Therefore, the Bureau's analyses of purpose and need, and decision, must be upheld. *Citizens Against Burlington*, 938 F.2d at 196; *Pac. Coast Fed. of Fishermen's Ass'ns*, 996 F. Supp. 2d at 906; *see also Surfrider Found. v. Dalton*, 989 F. Supp. 1309, 1327 (S.D. Cal. 1998), *aff'd.* 196 F.3d 1057 (9th Cir. 1999) (deferring to project proponent's assessment of need for federal action).

V. CONCLUSION

By its Opening Brief, CVC works to convince the Assistant Secretary-Indian Affairs that the Pacific Region's Regional Director abused her broad discretion when granting Yocha Dehe's 853-acre trust application. CVC fails. Her decision is well reasoned and fully supported by the record and the law. Respectfully, the Assistant Secretary-Indian Affairs should affirm.

Dated: February 4, 2015

DENTONS US LLP

By: _____

Paula M. Yost
Matthew G. Adams

Legal Counsel for Real Party In Interest
Yocha Dehe Wintun Nation

CERTIFICATE OF FILING AND SERVICE

Pursuant to 25 CFR § 2.12(a), I certify that a true and correct copy of this Responsive Brief of Real Party in Interest Yocha Dehe Wintun Nation was sent via electronic and U.S. mail, on February 4, 2015, addressed to:

Kevin K. Washburn
Assistant Secretary - Indian Affairs
U.S. Department of the Interior
MS-3642-MIB
1849 C Street, N.W.
Washington, D.C. 20240
f2appeals@bia.gov

Amy Dutschke, Regional Director
United States Department of the Interior
Bureau of Indian Affairs
Pacific Regional Office
2800 Cottage Way, W-2820
Sacramento, CA 95825
Amy.Dutschke@bia.gov

Donald B. Mooney
Law Offices of Donald B. Mooney
Legal Counsel for Capay Valley Coalition
129 C Street, Suite 2
Davis, CA 95616
dbmooney@dcn.org

Troy Burdick, Superintendent
United States Department of the Interior
Bureau of Indian Affairs
Central California Agency
650 Capitol Mall, Suite 8-500
Sacramento, CA 95814
Troy.Burdick@bia.gov

A copy of this Responsive Brief was also sent via U.S. mail to the parties listed below, on February 4, 2015. The Tribe provides copies of the Responsive Brief to these parties solely because such parties were served by Capay Valley Coalition with a copy of its Opening Brief. The Tribe does not consider these parties to be — nor, by serving them with copies of this Responsive Brief, concede that they are — "interested parties" for purposes of 25 C.F.R. § 2.12(a).

California State Clearing House
Office of Planning & Research
P.O. Box 3044
Sacramento, CA 95814

Stand Up for California
Cheryl Schmit, Director
P.O. Box 355
Penryn, CA 95663

Mr. Daniel Powell
Legal Affairs Secretary
Office of the Governor
State Capitol Building
Sacramento, CA 95814

Jim Eldon and Julie Rose
Tierra Rica
18265 County Road 70
Brooks, CA 95606

Sara Drake
Deputy Attorney General
State of California
Department of Justice
P.O. Box 944255
Sacramento, CA 04244-2550

U.S. Senator Dianne Feinstein
331 Hart Senate Office
Washington, DC 20510

Capay Valley Coalition
P.O. Box 894
Esparto, CA 95627

Yolo County Assessor
625 Court Street, Room 104
Woodland, CA 95695

Yolo County Board of Supervisors
Julie Dachter, Deputy Clerk of the Board
625 Court Street, Room 204
Woodland, CA 95695

Joseph V. Costello, Jr.
St. Francis Land & Cattle LLC
1880 Lombard Street
San Francisco, CA 94123

Donna and Larry Farnham
P.O. Box 141
Brooks, CA 95606

Charles M. Gordon, Jr.
Gordon Farms, Inc.
19341 County Road 76
Brooks, CA 95606

Yolo County Sheriff's Department
140 Tony Diaz Drive
Woodland, CA 95776

Paula M. Yost

83732710